



2001-0008214

RECORDING REQUESTED BY:
Union Pacific Railroad Company

Recorded
Official Records
County Of
BUTTE
CANDACE J. GRUBBS
Recorder
ROSEMARY DICKSON
Assistant
w2:52PM 01-Mar-2001

REC FEE 56.00
CONFORM .00

Kristy
Page 1 of 15

WHEN RECORDED, MAIL TO:

James L. Tjosvold, P.E., Chief
Northern California-Central
Cleanup Operations Branch
Department of Toxic Substances Control)
10151 Croydon Way, Suite 3
Sacramento, California 95827-2106

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
(Health and Safety Code section 25355.5)

ENVIRONMENTAL RESTRICTION (Civil Code section 1471(c))

(Re: Western Pacific Railroad Yard, Oroville, Butte County, California)

This Covenant and Agreement ("Covenant") is made by and between the Union Pacific Railroad Company (the "Covenantor"), the current owner of property situated in Oroville, County of Butte, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the California Department of Toxic Substances Control ("the Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("HSC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree, pursuant to Civil Code section 1471(c) and HSC section 25355.5 that the use of the Property be restricted as set forth in this Covenant. The Parties further intend that the provisions of this Covenant also be for the benefit of, and be enforceable by, the U.S. Environmental Protection Agency ("U.S. EPA") as a third party beneficiary.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 90 acres, is more particularly described and depicted in Exhibit "A". The Property is located at the south end of the City of Oroville in Butte County, California. The Property is bounded by

Baggett-Marysville Road on the south and east, and by industrial areas to the west and north.

1.02 Historically, the Property has been used for railroad refueling and maintenance yard activities. Such maintenance activities have included the repair, servicing, and cleaning of railroad rolling stock.

1.03. Hazardous substances, as defined in HSC section 25316; section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601(14); and 40 Code of Federal Regulations ("CFR") §§ 261.3 and 302.4 remain on portions of the Property, including volatile organic compounds (VOCs) in soil and ground water and polynuclear aromatic hydrocarbons (PAHs) in soils. These substances are also hazardous materials as defined in HSC section 25260. VOCs found in the ground water include trichloroethylene (TCE), 1,1,1-trichloroethane (1,1,1-TCA), 1,1-dichloroethene (1,1-DCE), and 1,1-dichloroethane (1,1-DCA).

1.04. The Property is being remediated pursuant to a Record of Decision ("ROD") for the Western Pacific Railroad Superfund Site ("the Site") issued by the U.S. EPA, dated September 30, 1997. Under the ROD, the U.S. EPA Region IX Superfund Division Director selected a final "remedial action" for the Site pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. §§ 9601 et seq.

1.05 The ROD provides for enforceable institutional controls limiting the future use of the Property to industrial use only. This restriction is necessary to preclude potential residential users' exposure to carcinogenic PAHs which will remain in site soils after soil remediation is complete and to limit potential residential users' exposure to volatile organic compounds (VOCs) identified in ground water beneath the site. A Ground water Pump and Treat System (all wells, pumps, piping, electrical, and treatment systems required to treat ground water) has been installed and is operating onsite to control and remediate ground water beneath the site. The Department concurred with this remedy on September 5, 1997.

ARTICLE II DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. U.S. EPA. "U.S. EPA" means the United States Environmental Protection Agency and includes its successor agencies, if any.

2.03 Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to, or an ownership interest in, all or any portion of the Property.

2.04. Occupant. "Occupant" means any Owner and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.05. CERCLA Lead Agency. "CERCLA Lead Agency" means the governmental entity having the designated lead responsibility to implement response action under the National Contingency Plan ("NCP"), 40 C.F.R. Part 300. U.S. EPA is the CERCLA Lead Agency at the time of the recording of this instrument.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to HSC section 25355.5 and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by U.S. EPA as a third party beneficiary and by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. The Covenantor and all successive Owners and Occupants of the Property are expressly bound hereby for the benefit of the Department and U.S. EPA. Pursuant to HSC section 25355.5, this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease, assignment, or other transfer of the Property, or any portion thereof, the owner, lessor, assignor, or other transferor shall give the buyer, lessee, assignee, or other transferee notice that hazardous substances are located on or beneath the Property.

3.04. Incorporation into Deeds, Leases, and Subleases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases, assignments, or other transfers of all or any portion of the Property which are hereafter executed or renewed. Further, each Owner or Occupant shall include in any instrument conveying any interest in all or any portion of the Property, including but not limited to deeds, leases, and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL RESTRICTION AND COVENANT TO RESTRICT USE OF PROPERTY, RECORDED IN THE PUBLIC LAND RECORDS ON __[DATE]__, IN BOOK ____, PAGE ____, IN FAVOR OF AND ENFORCEABLE BY THE CALIFORNIA DEPARTMENT OF TOXIC

SUBSTANCES CONTROL AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

3.05. Conveyance of Property. The Owner shall provide notice to the Department and to U.S. EPA not later than thirty (30) days after any conveyance or other transfer of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department and U.S. EPA shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect a proposed conveyance or transfer, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV RESTRICTIONS

4.01. Prohibited Uses. Future use of the Property shall be restricted to industrial and/or commercial use only, and the Property shall not be used for any of the following purposes:

- (a) A residence, including but not limited to any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.
- (e) Any other purpose involving residential occupancy on a 24-hour basis.

Nothing herein shall be construed as prohibiting temporary overnight lodging of train crews or other railroad personnel.

4.02. Soil Management. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed in accordance with all applicable provisions of state and federal law, and will not be removed from the Property without a Soil Management Plan approved by the CERCLA Lead Agency.

4.03. Prohibited Activities. Extraction of ground water for purposes or uses other than site remediation shall not be permitted on the Property, without prior written approval by the CERCLA Lead Agency.

4.04. Non-Interference with the Ground Water Pump and Treat System. Covenantor agrees:

- (a) Activities that may disturb the Ground water Pump and Treat System shall not be permitted on the Property without prior written approval by the CERCLA Lead Agency.
- (b) All uses and development of the Property shall preserve the integrity of the Ground Water Pump and Treat System.
- (c) The Ground Water Pump and Treat System shall not be altered without prior written approval by the CERCLA Lead Agency.

4.05. Access for U.S. EPA and Department. U.S. EPA and the Department shall have reasonable right of entry and access to the Property for inspection, monitoring, periodic reviews, and other activities consistent with the purposes of this Covenant as deemed necessary by

U.S. EPA or the Department in order to protect the public health or safety or the environment. Nothing in this instrument shall limit or otherwise affect U.S. EPA's right of entry and access, or U.S. EPA's authority to take response actions under CERCLA, the National Contingency Plan, 40 C.F.R. Part 300 and its successor provisions, or federal law

4.06. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the operation and maintenance activities relating to the Ground Water Pump and Treat System shall have reasonable right of entry and access to the Property for the purpose of implementing these operation and maintenance activities. Such right of entry and access shall continue until such time as the CERCLA Lead Agency determines that such activities are no longer required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. The Department or U.S. EPA shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. This Covenant shall be enforceable by the Department pursuant to Health and Safety Code, Division 20, Chapter 6.5, Article 8 (commencing with section 25180). Failure of the Covenantor, Owner, or Occupants to comply with any provision of Paragraphs 4.01 through 4.04 of this Covenant shall be grounds for the Department or U.S. EPA to require that the Covenantor, Owner or Occupants modify or remove, as appropriate, any improvements constructed or placed upon any portion of the Property in violation of the Restrictions. ("Improvements" herein shall include, but not be limited to, all buildings, roads, driveways, and paved parking areas). All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA, and violation of this Covenant shall be grounds for the Department or U.S. EPA to file civil or criminal actions, as provided by law or equity.

ARTICLE VI VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with HSC section 25233. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no variance may be granted under this paragraph 6.01 without prior review and prior concurrence of the variance by U.S. EPA. If requested by the Department or U.S. EPA, any approved variance shall be recorded in the land records by the person or entity granted the variance.

6.02 Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they

apply to all or any portion of the Property. Such application shall be made in accordance with HSC section 25234. Unless and until the State of California assumes CERCLA Lead Agency responsibility for Site operation and maintenance, no termination may be granted under this Paragraph 6.02 without prior review and prior written concurrence of the termination by U.S. EPA.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, after review and prior written concurrence by U.S. EPA, this Covenant shall continue in effect in perpetuity.

ARTICLE VII MISCELLANEOUS

7.01. No Dedication or Taking. The Covenantor entered into this Agreement as part of a resolution with the Department and U.S. EPA of its alleged liabilities for the Site. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof, to the general public or anyone else for any purpose whatsoever. Further, nothing set forth in this Covenant shall be construed to effect a taking under state or federal law.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Butte within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Owner: Rick Eades
Director, Environmental Site Remediation
Union Pacific Railroad Company
1416 Dodge Street, Room 930
Omaha, Nebraska 68179-0930

and:

Robert C. Bylsma
General Attorney
Union Pacific Railroad Company
10031 Foothills Blvd., Suite 200
Roseville, California 95747-7101

To DTSC: James L. Tjosvold, P.E., Chief
Department of Toxic Substances Control
Northern California-Central Cleanup Operations Branch
10151 Croydon Way, Suite 3
Sacramento, California 95827-2106

To EPA: Ms. Holly Hadlock
U.S. EPA, Region IX
75 Hawthorne Street, SFD-7-1
San Francisco, California 94105-3901
Re: Western Pacific R.R. Superfund Site,
Site ID No. R4; CERCLIS: CAD980

and:

Kara Christenson
Office of Regional Counsel, ORC-3
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, California 94105-3901
Re: Western Pacific R.R. Superfund Site

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.04. Partial Invalidity. If any portion of the Restrictions or other term set forth herein, or the application of it to any person or circumstance, is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant, or the application of such portions to persons or circumstances other than those to which it is found to be invalid, shall remain in full force and effect as if such portion found invalid had not been included herein.

**THIS SPACE
LEFT BLANK**

7.05. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

7.06. Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

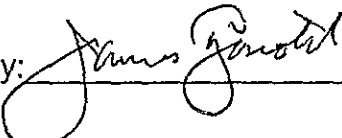
Covenantor: UNION PACIFIC RAILROAD COMPANY

By: 
D.H. LIGHTWINE
Director - Real Estate

Date: 12-08-99

Title:

Department of Toxic Substances Control

By: 

Date: 3/24/00

Title: Chief, Northern California Central Cleanup Operations

"U.S. EPA" as a Third Party Beneficiary

By: 

Date: 2-14-00

Title: Director, Superfund Division

STATE OF NEBRASKA)

COUNTY OF DOUGLAS)

On this 9th day of December, in the year 1999,

before me Robert E. Anderson, personally appeared

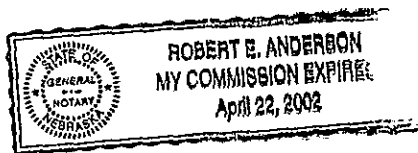
DON H. Lightwine, Director Real Estate,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Robert E. Anderson



STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

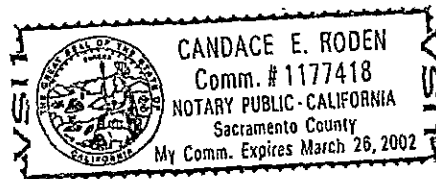
On this 24 day of MARCH, in the year
2000,

before me Candace E. Roden, personally appeared
JAMES L. TIOSVOLD

~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is /~~are~~ subscribed to the within instrument and
acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized
capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Candace E. Roden



STATE OF CALIFORNIA

COUNTY OF

SAN FRANCISCO

On this 14th day of FEBRUARY, in the year 2000,

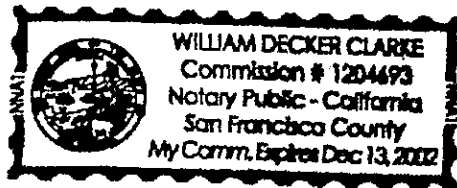
before me William Decker Clarke, personally appeared

KEITH A. TAKATA

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(x) whose name(x) is ~~here~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



ILLEGIBLE NOTARY SEAL DECLARATION
GOVERNMENT CODE 27361.7

I certify under penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

Name of Notary WILLIAM DECKER CLARKE Expiration Date 12/13/2002
Commission LD.# 1204693 Manufacturer's LD. # NNA1
County SAN FRANCISCO State CALIFORNIA
Place of execution of this declaration: SAN FRANCISCO, CALIFORNIA
Date: FEBRUARY 14, 2000 WILLIAM DECKER CLARKE
Signature (Firm name if any)

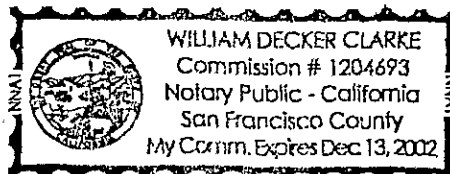


EXHIBIT "A"

Parcel No. 1:

All that real property, now of the Union Pacific Railroad, situate in the Southwest Quarter of Section 20, and the Northwest Quarter of Section 29, Township 19 North, Range 4 East, Mount Diablo Base and Meridian, in the County of Butte, State of California, as described in that certain deed from L.L. Green to Western Pacific Railway Company recorded in Book 109 of Deeds at page 92 in the Office of the County Recorder of said County of Butte, more particularly described as follows:

First: Beginning at a point on the north line of said Southwest quarter of Section 20 distant thereon 931 feet easterly from the Northwest corner of said quarter section: said point of beginning being on the easterly line of the right of way of the railroad of the Western Pacific Railway Company as described in that certain deed by the Gold Run Dredging Company, together with one William T. Baggett to said Western Pacific Railway Company date September 29, 1903, and recorded October 11, 1903 in Book 84 of Deed at page 77, in the Office of the County Recorder of said County of Butte, and running thence south $1^{\circ} 36'$ east along the easterly line of said right of way a distance of 3555 feet; thence at right angles easterly a distance 335 feet more or less to the westerly line of the right of way of the railroad of the Southern Pacific Company; thence northeasterly along said westerly line of said right of way a distance of 506.5 feet more or less to a point distant 660 feet at right angles easterly from the east line of said right of way of the railroad of the Western Pacific Railway Company; thence northerly and parallel with said easterly line of the right of way of the railroad of the Western Pacific Railway Company a distance of 1722 feet to a point on the easterly boundary line of the County road from the town of Oroville to the town of Palermo; thence at right angles westerly a distance of 210 feet; thence at right angles northerly and parallel with said easterly line of the right of way of the railroad of the Western Pacific Railway Company and distant 450 feet easterly therefrom a distance of 1098 feet to the Northerly line of said southwest quarter of said Section 20; thence westerly along said northerly line of said southwest quarter of distance of 450 feet to the place of beginning, containing 45.91 acres, more or less.

Second: Also that triangular piece or parcel of land, beginning at a point on the westerly line of said right of way of the railroad of the Western Pacific Railway Company 940 feet southerly from the north boundary line of said Section 29, and running thence North $1^{\circ} 36'$ west along the westerly line of said right of way a distance of 260 feet to the west line of said County Road from Oroville to Palermo; thence South $17^{\circ} 40'$ west along the east line of said County road a distance of 272.5 feet; thence easterly a distance of 90 feet to the point of beginning, containing 27/100 of an acre, more or less.

Reserving and excepting from said above described tract of land that portion thereof heretofore granted by said party of the first part to the County of Butte for road purposes, for a particular description of which reference is hereby made to the deed from L.L. Green to Butte County, dated November 24th, 1908.

ALSO EXCEPTING the abovementioned triangular parcel of land lying westerly of said right of way of the Railroad of the Western Pacific Railway Company.

Parcel No. 2:

All that real property, now of the Union Pacific Railroad, situate in the Southwest Quarter of Section 20, Township 19 North, Range 4 East, Mount Diablo Base and Meridian, in the County of Butte, State of California, as described in that certain deed from Mattie R. Lund to T.M. Schumacher recorded in Book 190 of Official Records at page 38 in the Office of the County Recorder of said County of Butte, more particularly described as follows:

Land west of the road in the SW1/4, less W.P. Railroad land in Section 20, Township 19 North, Range 4 East, M.D. B. & M; 57 acres.

EXCEPT that portion thereof described lying easterly of the lands described in that certain deed from Gold Run Dredging Company, et al, to the Western Pacific Railway Company recorded in Book 84 of Deeds at page 77 in the Office of the County Recorder of said County of Butte.

Parcel No. 3:

All that real property, now of the Union Pacific Railroad, situate in the Southwest Quarter of Section 20, and the Northwest Quarter of Section 29, Township 19 North, Range 4 East, Mount Diablo Base and Meridian, in the County of Butte, State of California, as described in that certain deed from STANDARD REALTY AND DEVELOPMENT COMPANY to T.M. SCHUMACHER ET AL recorded in Book 197 of Official Records at page 245 in the Office of the County Recorder of said County of Butte, more particularly described as follows:

All those certain vacated portions of Palermo Avenue, Star Street, McCoy Street and portions of Lots 71, 72, 77 to 80 and 82 to 85, inclusive, in the Baggett Tract, County of Butte, State of California, more particularly described as follows:

Beginning at a point in the westerly line of Palermo Avenue, distant thereon South 1° 36' East 40.04 feet from the intersection of the westerly production of the northerly line of Helman Street, with the said westerly line of Palermo Avenue, as said streets are delineated and so designated on that certain map entitled "Baggett Tract" filed June 14, 1909, at page 83, Map Book 6, in the office of the County Recorder of Butte County, State of California; thence from said point of beginning along said westerly line of Palermo Avenue (now vacated) South 1° 36' East 966.15 feet, more or less, to a point distant 70 feet northwesterly measured at right angles from the easterly line of Lot 88 of said Baggett Tract, or the southerly production thereof; thence parallel to said Lot line and along the westerly line of road as described in deed from Standard Realty and Development Company to County of Butte dated January 28, 1937, and accepted by the Board of Supervisors on February 26, 1937, North 18° 31' East 199.56 feet; thence following the westerly line of said road along a curve to the left having a radius of 465 feet, an arc distance of 163.26 feet to a point distant 30.0 feet measured at right angles easterly from the Easterly line of said Palermo Avenue (now vacated); thence North 1° 36' West parallel to said easterly line of Palermo Avenue (now vacated) 223.97 feet; thence along a curve to the left having a radius of

465 feet, an arc distance of 189.37 feet; thence North 24° 56' West 42.20 feet; thence northwesterly along a curve to the right having a radius of 535 feet, an arc distance of 177.80 feet, more or less, to the point of beginning, containing an area of 62,462 square feet, or 1.434 acres.

Parcel No. 4:

All that real property, now of the Union Pacific Railroad, situate in the Southwest Quarter of Section 20, and the Northwest Quarter of Section 29, Township 19 North, Range 4 East, Mount Diablo Base and Meridian, in the County of Butte, State of California, as described in that certain deed from Gold Run Dredging Company to Western Pacific Railway Company recorded in Book 84 of Deeds at page 77 in the Office of the County Recorder of said County of Butte, more particularly described as follows:

A strip or tract of land one Hundred (100 feet) in width, being fifty (50) feet on each side of, and parallel with the located center line of said Western Pacific Railway Company's line of railroad, as the same is staked out and located over and across the following described parcel of land:

The Southwest quarter of section Twenty (20) and the North Half of the northwest quarter of Section Twenty-nine (29), Township nineteen north, Range Four (4) East, M.D.M. The center line of said strip or tract of land hereby conveyed being particularly described as follows:

Beginning at a point in the North line of the Southwest quarter of Section Twenty (20), Township Nineteen (19) North, Range Four (4) East, M.D.M., Eight Hundred and Eighty one (881) feet east of the quarter section corner, between Sections Nineteen and twenty, at survey station numbered 81+82, and running thence South 1°36' East, along said surveyed line a distance of Thirty-nine Hundred and seventy-eight (3978) feet, to a point in the south line of the North half of the Northwest quarter of section Twenty-nine (29), Ten Hundred and Twenty-four (1024) feet east of the Southwest corner thereof, at survey station numbered 121+50, and containing Nine and Eleven-hundredths (9.11) acres more or less.

EXCEPTING therefrom the southerly four hundred twenty-three (423) feet.